

Article 8 – Transitional Provisions, Nonconformities, Nonconforming Alteration Approval

25.08.01 – Purpose of this Article

It is recognized that the adoption of this Chapter will change the previous zoning policy and regulations in the City and thereby render some existing developments nonconforming. This Article is intended to address development both in the pipeline as of (date of adoption) and existing development that will be considered nonconforming. The provisions of this Article are intended to recognize the interests of property owners in continuing to develop property that has been previously planned and approved and to use property previously built, while promoting the future establishment and reestablishment of structures and uses that comply with current zoning policy and regulations.

25.08.02 - Transitional Provisions

- a. *Purpose* – In order to maintain continuity for development approvals filed and processed in good faith under the provisions of the prior ordinance, the following provisions are included ~~or~~ in order to provide a process for completing the development review process.
- b. *Previously Approved Development Projects* – All development projects except those covered in Article 14, Special Zones, for which any development approval has been granted by an Approving Authority prior to _____ [effective date] may proceed to completion and operate in accordance with the terms of such development approval so long as said approval does not expire.
- c. *Expiration of Development Approval* – Upon the expiration of any development approval granted by an Approving Authority for a development prior to _____ [effective date], or upon the granting of any subsequent superseding permit or other approval, the requirements of this Chapter shall apply to any new application for approval for development.
- d. *Subsequent Approvals* – Notwithstanding subsections (a) and (b) of this Section, the following provisions apply to any portion of a previously approved development project for which a building permit is not obtained by the expiration date of the approval as provided below,
 1. *Use Permits* – Construction under a use permit must commence within two (2) years from the date of the approval letter of the Planning Commission or Chief of Planning or the use permit will expire. For good cause shown, not more than two (2) extensions not exceeding one (1) year each, may be granted by the original Approving ~~Body~~ Authority

2. *Special Exception*

- (a) If a use permit is required to implement a special exception, the use permit application must be filed within six (6) months from the date of the approval letter of the Board of Appeals or the special exception will expire. The approval process for the necessary use permits will follow the process in effect at the time of the special exception approval.
 - (b) If a building permit is required for a special exception, the building permit application must be filed within 12 months from the date of the approval letter of the Board of Appeals or the special exception will expire.
 - (c) If a neither a use permit nor a building permit is required to establish a use, such use must be established within 12 months of the approval letter of the Board of Appeals or the special exception will expire.
 - (d) Previously approved special exceptions for uses that are permitted or conditional uses under this Chapter may continue to exist as such permitted or conditional use and the special exception approval shall become void; provided that if the use does not satisfy the requirements of the applicable zone, such use may continue as a valid special exception subject to all conditions of the special exception approval.
3. *Variances* – Variances approved but not fully implemented prior to the effective date of this Chapter may continue in full force and effect, provided that the variance is implemented in accordance with Section 25.06.03.

4. *Use Permits for Multi-Phase Projects*

- (a) All phases of a multi-phase project for which a use permit or detailed application has been approved as of (date of adoption) must be commenced within eight (8) years from the date of the approval letter of the Approving Authority or the use permit will expire. A use permit will become void for those buildings within a multiple building development for which construction has not commenced within eight (8) years from the date of the use permit approval letter.
- (b) Any multi-phase project for which a use permit was approved prior to October 25, 1993 that has not commenced construction on all buildings as of _____ [effective date] has eight (8) years from _____ [effective date] to commence construction on all buildings or the use permit will expire.

- (c) Nothing herein shall affect the validity of a use permit for a building constructed in accordance with the requirements of the use permit prior to the expiration for the time frames set forth herein.

25.08.03 – Nonconformities, in General

Any use or development rendered non-conforming by the adoption of this Chapter or any amendment thereto, may continue subject to the limitations provided in this Chapter.

25.08.04 – Qualifying Substandard Lots

Any lot legally recorded by subdivision plat that is at least 40 feet wide is deemed to be a buildable lot even though it may have less than the minimum area required in any current residential zone. Such lots may be developed under the zoning development standards in effect when the lot was recorded except that:

1. A lot created by deed prior to October 1, 1957 that is a minimum of 5,000 square feet in area and at least 40 feet wide may be recorded as a buildable lot;
2. The maximum building height and maximum building coverage for any building or structure must comply with the current standards of the zone in which the lot is classified;
3. The main building setbacks are as follows:
 - (a) Front: 25 feet,
 - (b) Side: Seven (7) feet, and
 - (c) Rear; 20 feet; and
4. Construction on such lots must conform to any current established building line.

25.08.05 – Nonconforming Uses

- a. *Limitations on Expansion, Alteration, or Enlargement of Non-Conforming Uses* – No nonconforming use may be ~~extended~~ expanded, altered, or ~~expanded~~ enlarged, except as follows:
 1. A nonconforming use may be extended throughout those parts of a building or structure which were specifically designed or constructed for such use prior to

_____ [effective date] and which parts were either completed or substantially completed structurally prior to such date; and

2. Structural alterations of a building or structure, the use of which does not conform to the requirements of this Chapter, may be made only if the alteration is for the purpose of conforming to the use requirements of this Chapter, or to maintain the building or structure in safe repair.

b. *Termination*

1. The right to continue a nonconforming use terminates if:
 - (a) Damage or destruction of the building or structure encompassing the nonconforming use exceeds 50% of the building or structure's structural integrity; ~~or~~
 - (b) The nonconforming use is replaced by a permitted, conditional, or special exception use; or
 - (c) The use ceases for at least three (3) calendar months. A nonconforming use is not considered to have ceased if:
 - (i) Approval and execution of modifications or renovations are pursued to continue the use, subject to a validly issued building permit or occupancy permit or nonconforming alteration approval; ~~or~~
 - (ii) The property is being actively marketed for tenants to continue the use. A sign on the property advertising its availability is not, by itself, evidence of active marketing.
2. Notwithstanding the foregoing, if the property remains vacant for a period of 12 months, the nonconforming use is terminated. The property owner may request a six (6) month extension of the termination from the ~~Mayor and Council~~ Planning Commission for good cause shown. Such request must be submitted before the termination date. No more than two (2) such extensions may be granted.

25.08.06 – Development Standards Nonconformities

- a. *Limitations on Expansion, Alteration, or Enlargement of Development Standards Nonconformities* - A development standards nonconformity must not be extended, altered, or expanded, except as follows:

1. If a portion of a building or structure is nonconforming, then alterations, expansions, and enlargements may be made to the building or structure if they do not expand or extend the development standards nonconformity. Alterations to the portion of the building that constitutes a development standards nonconformity may be made only for the following reasons:
 - (a) To maintain the building or structure in safe repair;
 - (b) To improve the façade to enhance appearance; or
 - (c) To comply with the requirements of the Americans with Disabilities Act or other safety code requirements.
2. Any such alterations must not increase the amount of floor area of the development standards nonconformity by more than five percent (5%). The reasonable accommodation of such alterations may create or affect other development standards nonconformities. The coincidental effects resulting from the alteration on other development standards nonconformities must not exceed a cumulative total of five percent (5%).
3. Any major structural alterations or major reconstruction of a building or structure that exceeds 50% or more of the gross floor area of the existing building or structure, except for a single unit detached dwelling, must bring the building or structure into compliance with the provisions of this Chapter and eliminate the development standards nonconformities.
4. Conversion of a carport to a garage does not constitute the expansion of a development nonconformity and therefore does not trigger application of this Section.
- b. *Provisions for ~~Attached and~~ Detached Single Unit Dwellings* – If there is destruction of 50% or more of the exterior walls, or an expansion of more than 100% of the existing floor area in a single unit dwelling, the dwelling must be brought into compliance with the provisions of this Chapter.
- c. *Provisions for Existing Structures or Development in a Residential Medium Density Zone* – Existing structures or development in a Residential Medium Density Zone as of (effective date) must comply with the provisions of Section 25.11.04.d.
- d. *Termination of Development Standards Nonconformity* – Except for detached single unit dwellings, a development non-conformity shall terminate if a building or structure, or portion thereof, that includes a development standards nonconformity suffers damage or deterioration by fire, flood, explosion, or any

- ~~other catastrophic event~~ cause or casualty that exceeds 50% of the gross floor area of the existing building or structure of the replacement cost, and any repair or replacement must bring the building or structure into conformance with the requirements of this Chapter.
- e. *Historic District Zone Exceptions* – Within a designated Historic District Zone, any dwelling or other contributing resource may be repaired or replaced in kind in its original location, subject to approval of the Historic District Commission, notwithstanding the dwelling or resource’s failure to comply with any development standard contained in this Chapter. Any renovations or additions beyond the scope of the original structure must comply with the provisions of this Chapter.
 - f. *Nonconformity through Public Taking*
 - 1. A building, structure, or site improvement is not a development standards nonconformity if it is located on an otherwise lawful lot and the lot was reduced in area by a taking under eminent domain or other government action that would otherwise render the building, structure, or improvement nonconforming because a dimension of the building, structure, or site improvement or the location on the lot is deficient. The building, structure, or site improvement may be repaired, altered, or reconstructed, if it is an otherwise lawful use, only to the extent of original development existing on the date of the governmental action.
 - 2. In the event such property is subject to redevelopment that includes the removal of the principal use or structure on the site, the new development must conform to all provisions of this Chapter.
 - g. *Nonconforming Alteration Approvals* – Any proposed alteration to a development standards nonconformity under this Section must comply with the nonconforming alteration permit requirements set forth in Section 25.08.07.
 - h. *Sidewalk Modifications*
 - 1. Sidewalks on private property that do not meet the standards set forth in Section 25.17.05 are not nonconforming and may be repaired or replaced in kind. If the property is subject to development or redevelopment, then all sidewalks ~~must meet the standards~~ should comply with the guidelines set forth in Section 25.17.06.
 - 2. Sidewalks within the public right-of-way that are subject to conditions of site plan approval for construction, extension, or repair, must be constructed as directed by the Director of the Department of Public Works.

25.08.07 – Nonconforming Alteration Approval

a. Requirement

1. *Chief of Planning Review* – Nonconforming alteration approvals by the Chief of Planning are required in order to maintain nonconforming zoning entitlements for the following:
 - (a) ~~Substitution of a nonconforming use with another nonconforming use of a similar or less intensive character;~~
 - (a) Expansion of a nonconforming use to those parts of a building that were specifically designed or arranged for such use prior to the date when such use of a building became nonconforming;
 - (b) The modification of any nonconformity on a ~~residential low density Single Dwelling Unit Residential Zone~~ lot; and/or
 - (c) ~~Interior remodeling that does not increase the nonconforming area.~~
2. *Planning Commission Review* – Nonconforming alteration approvals by the Planning Commission are required to maintain nonconforming zoning entitlements for the following:
 - (a) Expansion, modification, or structural alteration of a structure or premises occupied by a nonconforming use. and/or
 - (b) A change to a nonconforming structure in compliance with the requirements of this Article that involves a physical change to the exterior part of the structure that is nonconforming.

b. Application

1. Applications for nonconforming alteration approvals must be submitted and processed in accordance with the provisions of Article 5, including but not limited to, amendments, notice of decisions, and appeals of decisions.
2. Applications for nonconforming alteration approvals must include all information specified by the Approving Authority, but must include at least the following:
 - (a) A site plan drawn to scale showing locations of all existing and proposed buildings, yards, driveways, and parking areas; and

- (b) Floor plans showing the location of uses in the structures and on the site.
- c. *Public Notification of Pending Application* – The Chief of Planning must send written notification of the application filing subject to the provisions of Section 25.05.03.c.
- d. *Procedure*
 - 1. *Chief of Planning Review*
 - (a) *Public Notification of Pending Application* – A sign must be posted on the property that is the subject of the application in accordance with the requirements in Section 25.05.03.d.
 - (b) *Public Hearing* – The Chief of Planning must hold a public meeting on each application if an objection to the application is raised within 30 days of the notice being sent.
 - (i) *Notice* – Written notice must be provided by the Chief of Planning in accordance with the provisions of Section 25.05.03.c.
 - (ii) *Meeting Procedure* – The meeting shall be conducted in accordance with the provisions of Section 25.06.06.e.3.
 - (c) *Action on Application*
 - (i) Within 60 days of sending the notice of the application, if no objection is raised, or within 30 days of the conclusion of the public meeting, the Chief of Planning must decide to:
 - A. Approve the application,
 - B. Approve the application subject to specific conditions, or
 - C. Deny the application.
 - (ii) The Chief of Planning may issue a nonconformity alteration approval only if the findings set forth in subsection 25.08.07d.2.(b)(i) - (vi), below, are made.
 - (iii) The Chief of Planning’s decision must be based on written findings of fact and may impose such conditions or restrictions upon the premises benefited by a nonconformity alteration

approval as may be necessary to comply with the intent and purposes of this Chapter.

2. *Planning Commission Review*

- (a) *Public Notice and Hearing* – The Planning Commission must hold a public hearing on an application for a nonconforming alteration approval. The Chief of Planning must provide notice of public hearing in accordance with the provisions of Section 25.05.03.c. and d.
- (b) *Issuance* – The Planning Commission may issue a nonconforming alteration approval only if all of the following findings can be made:
 - (i) Plans that document the nonconforming zoning entitlement being requested are on file with the City to document the existence and extent of requested nonconforming zoning entitlement.
 - (ii) The existing nonconforming use and/or structure has not resulted in a notable negative impact or nuisance to the surrounding properties and ~~district~~ zone (i.e. excessive parking demand, traffic, noise, view obstruction, etc).
 - (iii) The nonconforming use or structure is compatible with the general character of the surrounding neighborhood or ~~district~~ zone.
 - (iv) If the application is for a nonconforming use, the nonconforming use will not have ~~no~~ negative impacts on the public health, safety, aesthetics, and welfare of the nearby properties.
 - (v) The requested action will be consistent with the purpose and intent of the zone ~~zoning district~~.
 - (vi) If a nonconforming structure is involved, the applicant has reduced the nonconformities to an extent reasonably practicable.
 - (vii) For nonconforming alteration approvals that trigger conformance with current parking requirements pursuant to Article 16, the Planning Commission may waive the current parking requirement and allow the maintenance of the existing nonconforming parking entitlements through the grant of the nonconformity alteration approval, if the Commission finds that:
 - A. It is not practicable to provide the required parking onsite in a manner that preserves neighborhood character;

- B. The provision of the required parking would be in conflict with the replication of the structure; and
- C. Preserving the nonconforming parking entitlements is the best solution to provide consistency with the goals, policies, and intent of the Master Plan.
- e. *Conditions of Approval* – Approvals may be subject to any condition that the applicable Approving Authority finds necessary to protect the public health, safety, aesthetics, and welfare of the community and to ensure that the proposed use or development will be consistent with the purpose and intent of this Chapter.
- f. ~~Term~~ *Validity Period of Approval* – The nonconformity alteration approval will become effective on the date of the notification of decision in accordance with Section 25.05.06 and remain in effect in accordance with the terms of the decision.
- g. *Appeals* – The grant or denial of a nonconformity alteration approval may be appealed as follows:
 - 1. Decisions by the Chief of Planning may be appealed to the Planning Commission in accordance with the procedures of Section 25.04.06.c.
 - 2. Decisions by the Planning Commission ~~regarding a nonconformity alteration~~ may be appealed to the Circuit Court as provided in Section 25.04.02.g.